

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JAMES CHARLES TELFER,

Petitioner,

v.

Civil Action No. 5:14CV60
(STAMP)

RUSSEL PERDUE, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

On May 13, 2014, pro se¹ petitioner, James Charles Telfer, filed a petition pursuant to 28 U.S.C. § 2241, asserting that he has been subjected to cruel and unusual punishment because the prison officials are disregarding his severe medical conditions. Further, the petitioner contends that his complaint letters relating to the treatment of himself and another inmate, Sigmund Prescott, have been mishandled by prison staff. After filing his petition, he filed two letter motions to expedite a decision.

In accordance with Local Rule of Prisoner Litigation Procedure 2, this case was referred to United States Magistrate Robert W. Trumble. After reviewing the petition, Magistrate Judge Trumble issued a report and recommendation, recommending that this Court

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

deny the petition and dismiss it without prejudice because § 2241 was not the appropriate proper avenue to seek his requested relief. Instead, the magistrate judge stated that the complaints should have been raised pursuant to a civil rights complaint. Further, the magistrate judge recommended that the petitioner's motion to expedite be denied as moot. The magistrate judge advised the parties that, pursuant to 28 U.S.C. § 636(b)(1)(C), any party may file written objections to his proposed findings and recommendations within 14 days after being served a copy of the report and recommendation. The parties did not file objections.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. Because no objections were filed, all findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

A § 2241 motion is used to attack the manner in which a sentence is executed. See Preiser v. Rodriguez, 411 U.S. 475, 499-500 (1973). This Court, therefore, agrees with the magistrate judge, that, because the petitioner's claim does not relate to the fact or length of confinement, but instead relates to the care he is receiving in confinement or rather the conditions of his

confinement, the petitioner should have filed a civil rights action rather than a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

IV. Conclusion

For the reasons set forth above, this Court finds no clear error in the report and recommendation of the magistrate judge, and it is therefore AFFIRMED and ADOPTED in its entirety. Accordingly, for the reasons set forth above, the petitioner's § 2241 petition is DENIED and DISMISSED WITHOUT PREJUDICE to the petitioner's right to re-file his claims as a civil rights action. Further, petitioner's motion to expedite are DENIED AS MOOT. It is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

Finally, this Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner by certified mail.

Pursuant to Federal Rule of Civil Procedure 58, the Clerk is
DIRECTED to enter judgment on this matter.

DATED: August 4, 2014

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE